TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL NOTE

HB 1872 - SB 1858

March 7, 2020

SUMMARY OF BILL: Enacts the Tennessee Family Insurance Act (Act) for the purpose of offering family and medical leave insurance benefits payable to a covered individual, who meets any of the following requirements:

- Because of birth, adoption, or placement through foster care, is caring for a new child during the first year after the birth, adoption, or placement;
- Is caring for a family member with a serious health condition;
- Has a serious health condition that makes the covered individual unable to perform the functions of the position of employee; or
- Has a qualifying exigency, which is a need arising out of the deployment of a family member of the covered individual.

Such benefits shall be payable to someone who is not currently employed which meets any of the aforementioned requirements. Establishes that 12 weeks is the maximum time during which family and medical leave insurance benefits are payable in an application year.

The Department of Labor and Workforce Development (DLWD) will be the administrator of this program and may promulgate rules to effectuate the provisions of this Act. Requires the Department to, no later than September 1, 2021, and by September 1 of each subsequent year, report to the General Assembly on projected and actual program participation, premium rates, fund balances, and outreach efforts.

Establishes that the weekly benefit for such benefits is two-thirds of an employee's state average weekly wage up to a maximum benefit level of $850. Requires the DWLD to adjust the maximum weekly benefit amount to 90 percent of the state average weekly wage and the adjusted maximum weekly benefit amount shall take effect January 1 of the year following such adjustment.

Establishes the Family and Medical Leave Insurance Fund (Fund). Money in the Fund must be used only to pay benefits under and to administer the family and medical leave insurance program. The Fund shall cover all costs of the program, and money remaining in the Fund at fiscal year-end shall not revert to the General Fund, but remain in the Fund. Requires the State Treasurer to determine the amount of premiums necessary to finance this program. Employees are required to pay premiums in an amount determined by the Treasurer.

Establishes that if time taken with wage replacement under this chapter also qualifies as a reason for leave under the federal Family and Medical Leave Act of 1993 (FMLA), then time paid for pursuant to this chapter must run concurrently with leave taken under the FMLA.

An employer may require that payment made pursuant to this chapter be made concurrently or otherwise coordinated with payment made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or employer policy. The employer shall give individuals in its employ written notice of this requirement when the employee requests leave, or when the employer acquires knowledge that an employee's leave may qualify for the benefits under this Act.

Provides employment protections, including preventing adverse actions against any employee who utilizes insurance provided under the Act.

During any leave taken pursuant to this act, the employer is required to maintain healthcare benefits the covered individual had prior to taking such leave, as if the individual has remained in employment.

Any employee dissatisfied with a determination of eligibility and amount of benefits may appeal.

Requires DLWD to conduct a public educational campaign to inform workers and employers of the provisions available under this Act. Moneys in the Fund may be used to pay for such campaign.

For purposes of promulgating rules, this Act takes effect upon becoming law. For all other purposes, this Act shall take effect January 1, 2021.

ESTIMATED FISCAL IMPACT:

Increase State Revenue –
$178,125,000/FY20-21/Family and Medical Leave Insurance Fund
$356,250,000/FY21-22 and Subsequent Years/Family and Medical Leave Insurance Fund

Increase State Expenditures –
$7,820,800/FY20-21/General Fund
$15,641,600/FY21-22 and Subsequent Years/General Fund

$178,125,000/FY20-21/Family and Medical Leave Insurance Fund
$356,250,000/FY21-22 and Subsequent Years/Family and Medical Leave Insurance Fund

Increase Local Expenditures –
Exceeds $20,625,000/FY20-21*
Exceeds $41,250,000/FY21-22 and Subsequent Years*

Assumptions relative to state and federal government as employers:

- This Act specifies that the maximum amount of weeks that the TN family and medical leave insurance benefits are payable in an application year is 12 weeks and benefit amounts will be calculated at 2/3 the average weekly wage of the employee; however, the average weekly amounts are set at a minimum of $30 and a maximum of $850.
- According to the U.S. Department of Labor, 60 percent of all employees meet all criteria for coverage and eligibility under FMLA. Further, 13 percent of all employees reported taking leave for an FMLA qualifying reason in the previous 12 months. https://www.dol.gov/whd/fmla/survey/.
- Based on information provided by the Department of Human Resources (DHR), approximately 3,360 employees within executive branch agencies took some form of FMLA leave in FY18-19.
- Approximately 263 employees within the non-executive branch took some form of FMLA leave in FY18-19.

Overall Liability to the State:

- The *Family and Medical Leave Act in 2012: Final Report* with data last revised April, 2014 indicates that approximately 75 percent of current employees have an unmet need for leave and of those approximately 46.1 percent could not afford to go on unpaid leave.
- It is assumed current employees who currently cannot afford to take FMLA due to unpaid leave or do not have accumulated leave for the full 12 weeks will be able to take leave as a result of the proposed legislation; therefore, there will be an increase in FMLA leave taken by employees.

Branch	Average Salary	FMLA FY2019	Increase FMLA due to Paid Leave	Total FMLA Employees	Total for 12 weeks Paid Leave
Executive	$ 76,233	3,360	7,500	10,860	$ 191,051,626
Non-Executive	$ 111,714	263	1,081	1,344	$ 34,648,527
Totals		3,623	8,581	12,204	$ 225,700,153

- Based on information from DHR, approximately 70 percent of FMLA leave is taken as leave with pay by using annual, sick and compensatory leave. The provisions of the bill will result in leave days being used at a later time or accumulating throughout the employee's tenure.
- Any accumulated annual or compensatory time leave at the time of an employee's termination from state government is paid out based on the employee's hourly rate at the time. While this will not result in a direct annual fiscal impact, it does create a fiscal liability for the state.

- For the leave taken in FY18-19, it is assumed this will result in approximately $12,594,331 in additional liability each year {[(3,360 x ($76,233/365) x 23 days) + (263 x ($111,714/365) x 23 days)] x 70%}.
- Based on information collected regarding accumulated leave by state employees, approximately 40 percent of all accumulated leave is annual or compensatory time. It is estimated the 8,581 employees who take FMLA as a result of the proposed legislation will accumulate approximately 24 days of leave (60 days FMLA x 40%) resulting in additional state liabilities of $45,534,926 [(7,500 x ($76,233/365) x 24 days) + (1,081 x ($111,714/365) x 24 days)].
- The total state liability for unused leave is estimated to be $58,129,257 ($12,594,331 + $45,534,926).
- This amount will continue to grow as people are able to use paid FMLA leave rather than accumulated annual, sick, or compensatory time leave.
- Based on information provided by the Department of Finance and Administration, the state experiences payroll savings on average of $265,409,165 annually for these departments and agencies.

	Payroll Savings	
Fiscal Year	Executive Branch	Non-Executive Branches
FY2014 - 2015	$ 222,421,504	$ 24,400,933
FY2015 - 2016	$ 232,773,484	$ 28,254,081
FY2016 - 2017	$ 263,997,442	$ 28,883,235
FY2017 - 2018	$ 242,403,131	$ 27,553,477
FY2018 - 2019	$ 230,254,304	$ 26,104,232
Average	$ 238,369,973	$ 27,039,192

Annual Savings Unrealized:

- Annual savings realized within executive branch agencies for employees going on leave without pay for FMLA events is estimated to be two percent of all payroll savings, or approximately $4,767,399 ($238,369,973 x 2.0%).
- Similarly, annual savings realized within the court and constitutional officer departments for employees going on leave without pay for FMLA events is estimated to be 4.5 percent of all payroll savings, or approximately $1,216,764 ($27,039,192 x 4.5%).
- For purposes of this analysis, it is estimated total annual savings that will no longer be realized and will no longer be available for future expenditures will exceed $5,984,163 ($4,767,400 + $1,216,764) in recurring state expenditures.

Additional Expenditures:

- Based on information provided by the DHR, approximately six percent of FMLA leave employees result in hiring temporary employees or overtime being paid to current employees and each FMLA leave employee takes on average 23 days.

- With the proposed legislation resulting in an increase in employees taking FMLA and also the amount of time each employee will take, it is estimated temporary employee days and overtime pay will increase.
- Further, due to current employees no longer having to use accumulated annual, sick, or compensatory time leave to meet FMLA leave needs, it is reasonable to assume an overall increase in temporary and overtime employee days of approximately 10 percent. The total increase in temporary and overtime employee day expenditures is estimated to be $9,657,453.

Branch	Current Temporary and Overtime Employee Days	Increased Temporary and Overtime Employee days	Average Daily Rate	Total Cost for Temporary Employees
Executive	4,637	52,459	$ 141	$ 7,373,141
Non-Executive	363	9,825	$ 233	$ 2,284,313
Totals	5,000	62,284	$ 373	$ 9,657,453

- The total recurring increase in state expenditures for is estimated to exceed $15,641,616 ($5,984,163+ $9,657,453).
- It is assumed the provisions of this legislation do not apply to the federal government as an employer because states cannot impose mandated requirements upon the federal government. Therefore, no impact to federal government expenditures.

Assumption relative to local government as an employer:

- Based on information found in a 2012 Census Bureau report there are approximately 2.75 times as many employees under local governments compared to state government; therefore, the mandatory increase in local expenditures for local employee benefits is reasonably estimated to exceed $41,250,000 ($15,000,000 benefits x 2.75) statewide.

TN Family Medical Leave Fund:

- Based on information provided by the Bureau of Labor Statistics, private employment makes up approximately 86 percent, or over 2,700,000 of the workforce in Tennessee.
- This Act allows self-employed individuals and sole proprietors to choose to opt-in to the Fund. The total number of employers that may be exempt from paying premiums cannot be reasonably determined.
- The total amount of recurring premium payments from private employers is reasonably estimated to exceed $300,000,000.

- The total recurring increase in state revenue to the Fund is estimated to exceed $356,250,000 ($15,000,000 from state employees + $41,250,000 from local employees + $300,000,000 from private employees).
- It is assumed that any funds deposited to the Fund will be expended from the Fund for purposes consistent with this legislation, including but not limited to, benefits payable, various administrative expenses, and funding for multiple positions within Treasury and DLWD. Therefore, the recurring increase in state expenditures from the Fund is estimated to exceed $356,250,000.

Total Impact Assumptions:

- This Act is effective upon becoming law for purposes of promulgating rules, and for all other purposes is effective January 1, 2021; it is assumed that administrative costs will be for the full year in FY20-21 and premium collections and benefit payments will not begin until January 2021.
- The total revenue to the Fund is estimated to exceed $178,125,000 ($356,250,000 x 50%) in FY20-21; and exceed $356,250,000 in FY21-22 and subsequent years.
- The total expenditures from the Fund is estimated to exceed $178,125,000 ($356,250,000 x 50%) in FY20-21 and exceed $356,250,000 in FY21-22 and subsequent years.
- The total increase in state expenditures from the General Fund is estimated to exceed $7,820,800 ($15,641,600 x 50%) in FY20-21; and exceed $15,641,600 in FY21-22 and subsequent years.
- The total mandatory increase in local expenditures is estimated to exceed $20,625,000 ($41,250,000 x 50%) in FY20-21; and exceed $41,250,000 in FY21-22 and subsequent years.

IMPACT TO COMMERCE:

Increase Business Expenditures – Exceeds $300,000,000

Other Fiscal Impact – The increase in business expenditures may lead to businesses passing the cost of premiums along to employees; thus decreasing employee disposable income for certain employees. Alternatively, businesses may decrease their workforce; the precise impact on jobs in Tennessee cannot be reasonably determined, but is generally thought to be negative.

Assumptions:

- The provision of this legislation will increase private employer expenditures as a result of paying premiums for the TN Family Medical Leave Act for their employees.
- The total recurring increase in business expenditures is reasonably estimated to exceed $300,000,000.

- The increase in business expenditures may lead to businesses passing the cost of premiums along to employees; thus decreasing employee disposable income for certain employees, or it could lead to businesses decreasing their workforce in Tennessee.
- The precise impact on jobs in Tennessee cannot be reasonably determined; however, it is generally thought to be negative.

*Article II, Section 24 of the Tennessee Constitution provides that: *no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Krista Lee Carsner

Krista Lee Carsner, Executive Director

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